Supreme Court, U.S.
FILED

04 222 AUG 17 2004

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

DASSAULT AVIATION,

Petitioner,

v.

BEVERLY ANDERSON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

DAVID J. ADAMS
JOHN G. PFEIFFER
STEPHEN P. KENNEY
Pfeiffer & Adams
300 W. Adams Street
Suite 601
Chicago, IL 60606
(312) 377-7775

ALAN E. UNTEREINER*
MAX HUFFMAN
Robbins, Russell, Englert, Orseck & Untereiner LLP
1801 K Street, N.W.
Suite 411
Washington, D.C. 20006
(202) 775-4500

**Counsel of Record*

QUESTIONS PRESENTED

1. Whether the Eighth Circuit, in conflict with other circuits, and in disregard of this Court's decisions in *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333 (1925), and *United States* v. *Bestfoods*, 524 U.S. 51 (1998), correctly held that the forum contacts of a subsidiary corporation may be used to find *in personam* jurisdiction over its parent company even though there is no basis for piercing the corporate veil.

2. Whether the Eighth Circuit, in conflict with other circuits and in disregard of this Court's decisions, correctly held that the due process limits on *in personam* jurisdiction are

(a) properly determined by using an unstructured, multi-factor balancing test that fails to distinguish adequately between "specific" and "general" jurisdiction, fails to treat the threshold inquiry into the defendant's "minimum contacts" with the forum as distinct from an evaluation of fairness considerations, and gives little or no weight to the "procedural and substantive policies of other nations" and the "unique burdens" imposed on foreign defendants compelled to defend litigation in American courts (*Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 115 (1987)); and

(b) not offended by a State's exercise of long-arm jurisdiction over a non-U.S. manufacturer that lacks contacts of its own with the forum, in a product liability action in which the plaintiff is not a resident of the forum State; the alleged injuries occurred outside of the forum; and the plaintiff's claims arise out of the design, manufacture, and sale of a product in a foreign country.

RULE 29.6 STATEMENT

Petitioner Dassault Aviation has a parent corporation, Groupe Industriel Marcel Dassault, which owns 50.02% of Dassault Aviation's stock. The remaining stock is held by EADS (European Aeronautics Defense & Space Co.) – France (45.94%) and by private investors (4.04%). No publicly held corporation owns 10% or more of Dassault Aviation's stock.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... (i)

RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

A. Factual Background 2

B. Proceedings in the Trial Courts 3

C. The Court of Appeals' Decision 6

REASONS FOR GRANTING THE PETITION 8

I. The Decision Below Conflicts With Decisions Of This Court And The Lower Courts And Raises Important And Recurring Issues 12

A. The Eighth Circuit's Approach To Attributing A Subsidiary's Forum Contacts To A Parent Company 12

B. The Eighth Circuit's Multi-Factor Balancing Test 17

TABLE OF CONTENTS—Continued

Page

C. The Issues Raised Are Important And Recurring 23

II. The Decision Below Is Incorrect 24

III. This Case May Also Provide An Opportunity To Clarify The "Stream Of Commerce" Theory 28

CONCLUSION 30

TABLE OF AUTHORITIES

Cases: **Page(s)**

Aftanase v. *Economy Baler Co.*,
343 F.2d 187 (8th Cir. 1965) 20, 22

Alpine View Co. v. *Atlas Copco AB*,
205 F.3d 208 (5th Cir. 2000) 14

Amoco Egypt Oil Co. v. *Leonis Navigation Co.*,
1 F.3d 848 (9th Cir. 1993) 21

Asahi Metal Indus. Co. v. *Superior Court*,
480 U.S. 102 (1987) ..... *passim*

Bearry v. *Beach Aircraft Corp.*, 818 F.2d 370
(5th Cir. 1987) 30

Berkey v. *Third Ave. Ry. Co.*, 155 N.E. 58
(N.Y. 1926) 25

Bridgestone Corp. v. *Lopez*, 131 S.W.3d 670
(Tex. Ct. App. 2004) 16

Brunswick Corp. v. *Suzuki Motor Co., Ltd.*,
575 F. Supp. 1412 (E.D. Wis. 1983) 17

Burger King Corp. v. *Rudzewicz*,
471 U.S. 462 (1985) ..... *passim*

Burnham v. *Superior Court*, 495 U.S. 604 (1990) 9, 25

Cannon Mfg. Co. v. *Cudahy Packing Co.*,
267 U.S. 333 (1925) ..... *passim*

Carnival Cruise Lines, Inc. v. *Shute*,
499 U.S. 585 (1991) 9

Cerberus Partners, L.P. v. *Gadsby & Hannah, LLP*,
836 A.2d 1113 (R.I. 2003) 20, 21

TABLE OF AUTHORITIES—Continued

Page(s)

Clune v. *Alimak AB*, 233 F.3d 538 (8th Cir. 2000), cert. denied, 533 U.S. 929 (2001) 7-8

Coca-Cola Co. v. *Procter & Gamble Co.*, 595 F. Supp. 304 (N.D. Ga. 1983) 14

Consolidated Development Corp. v. *Sherritt, Inc.*, 216 F.3d 1286 (11th Cir. 2000) 13

Covia v. *Robinson*, 507 N.W.2d 411 (Iowa 1993) 20

Daimler-Benz Aktiengesellschaft v. *Olson*, 21 S.W.3d 707 (Tex. Ct. App.), rev. denied, 53 S.W.3d 308 (Tex. 2000), cert. denied, 535 U.S. 1077 (2002) 16

DaimlerChrysler Aktiengesellschaft v. *Olson*, 535 U.S. 1077 (2002) 23

Davis v. *Metro Prods., Inc.*, 885 F.2d 515 (9th Cir. 1989) 16

Dehmlow v. *Austin Fireworks*, 963 F.2d 941 (7th Cir. 1992) 29

Dole Foods Co. v. *Patrickson*, 538 U.S. 468 (2003) 25

Donatelli v. *Nat'l Hockey League*, 893 F.2d 459 (1st Cir. 1990) 19

Energy Reserves Group, Inc. v. *Superior Oil Co.*, 460 F. Supp. 483 (D. Kan. 1978) 16

Ensign v. *Bank of Baker*, 676 N.W.2d 786 (N.D. 2004) 20

TABLE OF AUTHORITIES—Continued

Page(s)

Enterprise Rent-A-Car Co. v. *U-Haul Int'l, Inc.*, 2004 WL 1724654 (E.D. Mo. July 22, 2004) 15

Erie R. Co. v. *Tompkins*, 304 U.S. 64 (1938) 13

ESAB Group, Inc. v. *Centricut, Inc.*, 126 F.3d 617 (4th Cir. 1997), cert. denied, 523 U.S. 1048 (1998) 21

F. Hoffmann-La Roche Ltd. v. *Empagran*, 124 S. Ct. 2359 (2004) 11, 19

Gallagher v. *Mazda Motor of Am.*, 781 F. Supp. 1079 (E.D. Pa. 1992) 14

Gray v. *Riso Kagaku Corp.*, 1996 WL 181488 (4th Cir. Apr. 17, 1996) 13-14

Great Lakes Overseas, Inc. v. *Wah Kwong Shipping Group, Ltd.*, 990 F.2d 990 (7th Cir. 1993) 14

Guardian Royal Exch. Assurance, Ltd. v. *English China Clays, P.L.C.*, 815 S.W.2d 223 (Tex. 1991) 21

Hansen v. *Scott*, 645 N.W.2d 223 (N.D. 2002), cert. denied, 537 U.S. 1108 (2003) 20

Helicopteros Nacionales de Colombia, S.A. v. *Hall*, 466 U.S. 408 (1984) 4, 18, 21, 27

I.A.M. Nat'l Pension Fund v. *Wakefield Indus., Inc.*, 699 F.2d 1254 (D.C. Cir. 1983) 13

In re Telectronics Pacing Systems, Inc., 953 F. Supp. 909 (S.D. Ohio 1997) 14

TABLE OF AUTHORITIES—Continued

Page(s)

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945) ..... *passim*

Keeton v. *Hustler Magazine, Inc.*, 465 U.S. 770 (1984) 25-26

Kerry Steel, Inc. v. *Paragon Indus., Inc.*, 106 F.3d 147 (6th Cir. 1997) 21

Land-O-Nod Co. v. *Bassett Furn. Indus., Inc.*, 708 F.2d 1338 (8th Cir. 1983) 22

Lee v. *Goshen Rubber Co.*, 635 N.E.2d 214 (Ind. App. 1994) 20

Lesnick v. *Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994), cert. denied, 513 U.S. 1151 (1995) 29

McInnis v. *Daniel*, 535 U.S. 1077 (2002) 23

Metropolitan Life Ins. Co. v. *Robertson-Ceco Corp.*, 84 F.3d 560 (2d Cir.), cert. denied, 519 U.S. 1006 (1996) 10, 20

OMI Holdings Inc. v. *Royal Ins. Co.*, 149 F.3d 1086 (10th Cir. 1998) 20

Omni Capital Int'l, Ltd. v. *Rudolf Wolff & Co.*, 484 U.S. 97 (1987) 23

Panamerican Mineral Servs., Inc. v. *KLS Enviro Resources, Inc.*, 916 P.2d 986 (Wyo. 1996) 14

Pennoyer v. *Neff*, 95 U.S. 714 (1877) 9

Purdue Research Found. v. *Sanofi-Synthelabo, S.A.*, 338 F.3d 773 (7th Cir. 2003) 21

TABLE OF AUTHORITIES—Continued

Page(s)

Ruckstuhl v. *Owens Corning Fiberglass Corp.*, 731 So. 2d 881 (La.), cert. denied, 528 U.S. 1019 (1999) 29, 30

Rush v. *Savchuk*, 444 U.S. 320 (1980) 25

Shaffer v. *Heitner*, 433 U.S. 186 (1977) 25

Southern Co. v. *Alderson*, 535 U.S. 1090 (2002) 23

Sutherland v. *Brennan*, 901 P.2d 240 (Or. 1995) 20

United States v. *Bestfoods*, 524 U.S. 51 (1998) 11, 25

Velandra v. *Regie Nationale Des Usines Renault*, 336 F.2d 292 (6th Cir. 1964) 14

Vermeulen v. *Renault U.S.A., Inc.*, 985 F.2d 1534 (11th Cir.), cert. denied, 508 U.S. 907 (1993) 30

Vikse v. *Flaby*, 316 N.W.2d 276 (Minn. 1982) 20

Volkswagenwerk Aktiengesellschaft v. *Beech Aircraft Corp.*, 751 F.2d 117 (2d Cir. 1984) 14

Wells Fargo & Co. v. *Wells Fargo Express Co.*, 556 F.2d 406 (9th Cir. 1977) 16

Wessels, Arnold & Henderson v. *National Medical Waste, Inc.*, 65 F.3d 1427 (8th Cir. 1995) 22

Westinghouse Elec. Corp. v. *Superior Court*, 551 P.2d 847 (Cal. 1976) 15

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page(s)

Statutes:

Ark. Code Ann. § 16-4-101.B 1

28 U.S.C. § 1257 22

Miscellaneous:

ABA LITIGATION SECTION, BUSINESS & COMMERCIAL LITIGATION IN FEDERAL COURTS (Robert L. Haig ed. 1998) 9-10

P. BLUMBERG, THE LAW OF CORPORATE GROUPS: PROCEDURAL PROBLEMS IN THE LAW OF PARENT AND SUBSIDIARY CORPORATIONS (1983) 23

Comment, *Jurisdiction Over a Corporation Based on the Contacts of a Related Corporation: Time for a Rule of Attribution*, 92 DICK. L. REV. 917 (1988) 14

Comment, *Jurisdiction Over a Corporation on the Basis of the Contacts of an Affiliated Corporation: Do you Have to Pierce the Corporate Veil?*, 61 U. CIN. L. REV. 595 (1992) 17

Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 YALE L.J. 93 (1929) ... 25

T. FRIEDMAN, THE LEXUS AND THE OLIVE TREE (2000) 10

Maltz, *Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on* Asahi Metal Indus. Co. *v.* Superior Ct. of Cal., 1987 DUKE L.J. 669 20

TABLE OF AUTHORITIES—Continued

Page(s)

McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended The Limits Of Due Process*, 84 B.U. L. REV. 491 (2004) 23

McFarland, *Drop the Shoe: A Law of Personal Jurisdiction*, 68 MO. L. REV. 753 (2003) 9, 22

Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807 (2004) 22

Swain & Aguilar, *Piercing the Veil To Assert Personal Jurisdiction Over Corporate Affiliates: An Empirical Study of the* Cannon *Doctrine*, 84 B.U. L. Rev. 445 (2004) 23

Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036 (1991) .. 23

Voxman, *Jurisdiction over a Parent Corporation in its Subsidiary's State of Incorporation*, 141 U. PA. L. REV. 327 (1992) 12-13

Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531 (1995) 8-9

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Eighth Circuit (App., *infra*, 1a-9a) is reported at 361 F.3d 449. The order denying rehearing (App., *infra*, 30a) is unreported. The opinion of the United States District Court for the Eastern District of Arkansas dismissing the complaint for lack of personal jurisdiction (*id.* at 10a-21a) is also unreported. The order of the United States District Court for the Western District of Michigan granting dismissal in a related case (*id.* at 22a-23a), and that court's prior related opinion (*id.* at 24a-29a), are both unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 2004, and rehearing was denied on April 9. App., *infra*, 1a, 30a. Justice Thomas extended the time for filing a petition for a writ of certiorari until August 17, 2004. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the Constitution provides, in pertinent part, that "[n]o State shall * * * deprive any person of life, liberty, or property, without due process of law." The Arkansas long-arm statute, Ark. Code Ann. § 16-4-101.B, authorizes the exercise of personal jurisdiction "to the maximum extent permitted by * * * the Fourteenth Amendment of the United States Constitution."

STATEMENT

This case raises important issues of constitutional law that are litigated with great frequency in federal and state courts across the country. It also presents a valuable opportunity for this Court to provide much-needed clarification concerning the limits imposed by due process on the power of a State, through its long-arm statute, to exercise *in personam* jurisdiction over a nonresident defendant (especially, as in this case, a non-U.S. corporation). In the decision below, a panel of the Eighth Circuit held that Arkansas may hale a French manufacturer into

court to defend a product liability action, even though the French company has *no* contacts in its own right with the State; the product involved in the accident was designed, manufactured, and sold across the Atlantic; and the claims arise out of injuries allegedly suffered outside of Arkansas by a nonresident. The court of appeals was able to reach that flawed result only by relying on the Arkansas contacts of petitioner's wholly owned U.S. subsidiary, even though (as the court of appeals acknowledged) there was no basis for piercing the corporate veil. The Eighth Circuit's far-reaching and mistaken jurisdictional holding – which conflicts in multiple respects with the decisions of this Court and other circuits, but which finds support in the decisions of various state courts – warrants review.

A. Factual Background

This case arises out of injuries allegedly suffered by respondent Beverly Anderson, a Michigan resident, while working as a flight attendant for the Amway Corporation, a Michigan corporation, on a jet owned by that company. The injuries occurred when the jet underwent a series of pitch oscillations as it descended into an airport in Michigan at the conclusion of a flight originating in Oregon. App., *infra*, 10a-11a. The jet was manufactured in France by petitioner Dassault Aviation (Dassault) and sold there to petitioner's wholly owned U.S. subsidiary, Dassault Falcon Jet Corp. (Falcon Jet), which serves as petitioner's exclusive distributor in the Western Hemisphere. *Id.* at 1a-2a, 5a. Falcon Jet, though headquartered in New Jersey, operates a large facility in Arkansas, where it paints and adds furnishings and optional avionics to the jets it sells according to the specifications of its customers. *Id.* at 3a, 6a, 11a; C.A. App. 50.

Title to the jet passed in France, and Falcon Jet flew the airplane "green" – an industry term used to describe the primer coat of paint before a jet is painted and outfitted – to Arkansas. App., *infra*, 19a. At its Arkansas facility, Falcon Jet "completed" the airplane for sale to Amway. *Id.* at 2a, 11a, 19a. According to Anderson's complaint, the aircraft's oscillations were

caused by a defective autopilot – a component made by Honeywell, Inc., a corporation headquartered in New Jersey at the time this suit was filed, and installed by Dassault in France. *Id.* at 1a-2a; C.A. App. 1-4.

B. Proceedings in the Trial Courts

1. Anderson filed a product liability action in the Western District of Michigan, naming as defendants Honeywell, Falcon Jet, and petitioner Dassault. App., *infra*, 2a, 11a. The district court dismissed the case against Dassault for lack of personal jurisdiction (*id.* at 22a-29a), holding that Anderson had not "met her burden of establishing that Dassault had sufficient contacts in Michigan to fall within the long-arm statute" and, "[e]ven if she had, constitutional considerations" would preclude the exercise of *in personam* jurisdiction over Dassault there. *Id.* at 29a.

The court rejected Anderson's submission that "it should disregard the formal corporate separation between Dassault and * * * Falcon [Jet]" and attribute Falcon Jet's alleged contacts with Michigan to its parent. App., *infra*, 27a. "[M]ere ownership of the subsidiary," the court explained, "is insufficient" because "a parent company will *always* exercise some amount of control" over a subsidiary. *Id.* at 26a. Thus, to attribute Falcon Jet's contacts to Dassault, Anderson "must demonstrate an alter-ego relationship or an undue amount of control." *Id.* at 26a. "Even though Dassault Falcon was the exclusive distributor of Dassault's aircraft, and the two companies may have shared common members between the two boards of directors[,] that is insufficient to create personal jurisdiction over Dassault." *Ibid.*

Next, the district court noted that both the Sixth Circuit and the Michigan courts had "set forth three criteria that must be met before a court will exercise personal jurisdiction" in the face of a due process challenge:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant

> must have a substantial enough connection with the forum state to make the exercise of jurisdiction * * * reasonable.

App., *infra*, 27a. There was no need to consider all three factors, the court reasoned, because Anderson "cannot meet the first criterion." *Id.* at 28a. "[T]hat a Dassault-manufactured product was sold to a corporation in Michigan and allegedly caused an accident in the airspace over Michigan is not enough to meet the purposeful availment requirement." *Id.* at 28a-29a.

2. Anderson next initiated this litigation against Dassault in the Eastern District of Arkansas. App., *infra*, 12a. In response to Dassault's motion to dismiss for lack of personal jurisdiction, Anderson argued that the district court could exercise both "general" and "specific" jurisdiction over Dassault.[1] Rejecting Anderson's submission, the Arkansas district court, like the Michigan court, dismissed the case for lack of personal jurisdiction. *Id.* at 10a-21a.

The court first noted that Arkansas's long-arm statute reaches as far as the Due Process Clause permits. It then explained that "[t]he Eighth Circuit has established a five-factor test to determine the sufficiency of a defendant's contacts" under the Due Process Clause: "(1) the nature and quality of contacts with the forum state; (2) the quantity of such contacts; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) [the] convenience of the parties." App., *infra*, 13a-14a.

Next, the court "carefully considered" Dassault's contacts with Arkansas and concluded that Anderson had not made out "a *prima facie* showing of personal jurisdiction." App., *infra*,

---

[1] In *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414-16 n.9 (1984), this Court recognized that personal jurisdiction comes in two distinct forms: (1) *specific* jurisdiction (where the cause of action specifically "aris[es] out of or relate[s] to" the defendant's contacts with the forum), and (2) *general* jurisdiction (where the defendant's activities *within* the forum are so substantial, "continuous and systematic" that the law deems the defendant to be "present" and thus amenable to *any* kind of suit, even one wholly unrelated to the defendant's forum contacts).

15a. "It is undisputed," the court explained, "that Dassault Aviation *itself* was neither present nor doing business in Arkansas." *Ibid.* Moreover, "Anderson does not dispute" that Dassault "is a French Corporation" that, in the State of Arkansas, "is not qualified or licensed to do business," "maintains no offices * * * and owns no real property," "maintain[s] [no] agent for service of process," "does not have a telephone listing * * * [or] any warehouse or manufacturing facilities," "does not have a bank account * * * [or] insure any person," "does not enter into any contracts to furnish goods or products," and "has not consented to be haled into court." *Ibid.*; see also C.A. App. 11-12.

Like the Michigan district court, the Arkansas district court rejected Anderson's argument that jurisdiction could be asserted over Dassault based on the contacts that *Falcon Jet* had with the State. App., *infra*, 15a-20a & n.4. Attribution or "imput[ation]" of the subsidiary's contacts to the parent company, the court reasoned, "is contingent on the ability of Anderson to pierce the corporate veil" under "[s]tate law." *Id.* at 16a-17a & n.4. But Anderson had not made the required showing by "clear proof" that Dassault had "so controlled and dominated the affairs" of Falcon Jet that veil-piercing was permissible. *Id.* at 18a (internal quotations omitted). "[N]one of the evidence" submitted by Anderson – including jointly published "operator directories, press releases, [and] websites," or the "distributorship agreements" entered into by Dassault and Falcon Jet, or various statements or data in Dassault's "annual reports[] and financial statements" – demonstrated that Falcon Jet "was controlled and manipulated by Dassault" and "was thus the mere instrumentality or alter ego of Dassault." *Ibid.* See also note 2, *infra*.

Equally meritless, the district court stated, was Anderson's reliance on the fact that Dassault and Falcon Jet "share two officers." App., *infra*, 18a. The "[m]ere[]" fact that "the two corporations are managed by the same officers," the court held, "does not thereby make the acts of * * * Falcon Jet * * * those of Dassault." *Id.* at 19a; see also *id.* at 18a. "Rather, the evidence of record reveals nothing more than a *typical corporate relationship* between a parent and its wholly owned subsidiary."

Ibid. (emphasis added); see also *id.* at 18a (sharing of two officers was "of no import").

Finally, the fact that Amway's airplane had been "completed" in Little Rock (a term of art in the aircraft industry) had no bearing on *Dassault*'s contacts because, as Anderson conceded, the customizing work was done by *Falcon Jet*. App., *infra*, 19a. Moreover, the term "completed" was "misleading" because it refers to the customizing process and there was no dispute that Dassault had parted with title to its product in France. *Ibid.* Thus, Anderson had "failed to link" Dassault to Arkansas "except as a parent corporation." *Id.* at 21a.

C. The Court of Appeals' Decision

A panel of the Eighth Circuit reversed. App., *infra*, 1a-9a. Initially, the court of appeals rejected the district court's "bright-line rule" according to which "the activities of the parent's subsidiary" must be disregarded "unless the subsidiary's veil can be pierced under state law." *Id.* at 4a. "Determining the propriety of jurisdiction," the Eighth Circuit said, is "not readily amenable to rigid rules that can be applied across the entire spectrum of cases." *Id.* at 4a-5a.

Next, the panel evaluated Dassault's due process challenge by examining, and balancing, the following considerations: "the quantity of contacts that Dassault Aviation has with Arkansas"; "the quality and nature of those contacts"; "the interest of Arkansas in adjudicating the dispute"; and the convenience of the parties. App., *infra*, 3a. The panel also explained that, "[i]n assessing the nature of" Dassault's contacts (*ibid.*), it would weigh "'the interstate judicial system's interest in obtaining the most efficient resolution of controversies'" and "'the shared interest of the several states in furthering fundamental substantive social policies.'" *Ibid.* (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980)). The panel did not, however, mention the distinction between "specific" and "general" jurisdiction (much less apply the different legal tests applicable to each). See note 1, *supra*.

Turning to Dassault's supposed contacts with Arkansas, the panel first acknowledged that they "result, in large part, from" Dassault's "business relationship with * * * Falcon Jet, which operates a large production site in Little Rock * * * *." App., *infra*, 3a. The panel did not disturb the district court's finding that Falcon Jet was not Dassault's alter ego, nor did it conclude that veil piercing was permissible on this record. See *id.* at 5a (stating that Dassault's ownership of Falcon Jet's shares was not "an abuse of the corporate organizational form"). The panel nevertheless emphasized what it viewed as the "close, synergistic" or "symbiotic" relationship between the French parent and its U.S. subsidiary. *Id.* at 5a, 9a. The panel also considered it important that Dassault "benefits greatly from * * * Falcon Jet's exclusive distribution of its business jets throughout the western hemisphere" and "has a clear awareness of and interest in its subsidiary's substantial operations in Arkansas." *Id.* at 5a.[2]

The panel also noted that "[t]he majority of jets sold worldwide by Dassault Aviation fly in and out of Arkansas to be completed to the specifications of consumers" at Falcon Jet's Arkansas facility. App., *infra*, 5a. The panel said that "[t]his is not a situation in which Dassault Aviation simply placed the jet at issue 'into the stream of commerce' which fortuitously swept it into Arkansas." *Id.* at 7a. The panel also cited *Clune* v. *Alimak AB*, 233 F.3d 538 (8th Cir. 2000), cert. denied, 533 U.S.

---

[2] The panel identified several other indicia of a "closely intertwined business relationship" that it believed justified attributing Falcon Jet's activities in Arkansas to Dassault, including: (1) a statement in Dassault's annual report that the company was "present" in the United States "through its [Falcon Jet] subsidiary"; (2) the existence of "[a] website jointly administered by" Dassault and Falcon Jet that included a description of their prior collaboration; (3) the "overlap" in the "officers and directors of the two companies" (which the district court had brushed aside as insignificant); (4) the fact that Dassault "paid over $126 million" to Falcon Jet in the seven years preceding the filing of this lawsuit for completions on jets that Dassault itself later sold to third parties; (5) the use by both companies of "the word 'Dassault' in their name" and "a common logo"; and (6) the companies' collaboration in publishing several directories of owners of Dassault business jets or of customer service information. App., *infra*, 5a-8a.

929 (2001), for the proposition that "'a foreign manufacturer that successfully employs one or two distributors to cover the United States intends to reap the benefit of sales in every state where those distributors market.'" App., *infra*, 8a (quoting 233 F.3d at 444)). Because "*Falcon Jet* not only marketed and sold products in Arkansas, but [also] * * * operated" there the "largest production facility" of the "Dassault Aviation Group,"[3] the panel concluded that *Dassault* had "purposefully directed its products to the United States, and specifically to Arkansas." *Ibid.* (emphasis added; internal quotations omitted).

Finally, the panel observed that other "considerations" also "support[ed] the exercise of personal jurisdiction in Arkansas." App., *infra*, 9a. It asserted that Arkansas's interest in the subject matter of the dispute was "substantial," even though Anderson is a Michigan citizen and the injury occurred in Michigan, because "the safety of Falcon jets affects the state's consumers and workers who encounter Dassault Aviation's products"; that Anderson's interest in the Arkansas forum was strong, because she "likely has no other forum available to her" in the United States in which to sue Dassault; and that the prejudice to Dassault from being compelled to defend in Arkansas was not significant, because "presum[ably]" Dassault "has ready access to air transportation for conveniently making the trip." *Ibid.*

REASONS FOR GRANTING THE PETITION

This case presents the Court with a valuable opportunity to resolve conflicts and dispel pervasive confusion in the lower courts over the limits imposed by the Due Process Clause on the power of a State to exercise *in personam* jurisdiction over a nonresident defendant. This important question, which arises at the threshold of much civil litigation, has "become one of the most litigated issues in state and federal courts." Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 & n.5 (1995) (taking note of more than 2300

---

[3] The court of appeals used this term to refer collectively to Dassault and several of its subsidiaries, including Falcon Jet. See App., *infra*, 2a.

cases involving "minimum contacts" test in 1990-95 alone). For almost 20 years, since *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462 (1985), this Court has only rarely ventured its views about the content of the "minimum contacts" test first announced in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). This Court's fractured decisions in *Burnham* v. *Superior Court*, 495 U.S. 604 (1990), and *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102 (1987), were unable to clarify the vast run of personal jurisdiction cases, including the large category of cases involving non-U.S. corporations. And, although this Court granted review in *Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585 (1991), to resolve a circuit conflict over an important subsidiary question in this area of law, that case was resolved on another ground. *Id.* at 588-89.

It was not always so. Between 1945, when this Court first declared that due process precludes a State from exercising *in personam* jurisdiction unless there are "minimum contacts" between the defendant and the State "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" (*International Shoe Co.*, 326 U.S. at 316), and *Asahi* in 1987, this Court decided eighteen cases involving the *International Shoe* test. See McFarland, *Drop the Shoe: A Law of Personal Jurisdiction*, 68 MO. L. REV. 753, 771 (2003). Under the prior, territorial-based regime of *Pennoyer* v. *Neff*, 95 U.S. 714 (1877), which lasted for 68 years, this Court addressed the question of personal jurisdiction "at least fifty-three times." McFarland, 68 MO. L. REV. at 769. In sharp contrast to that historically high level of attention, this Court "has not returned to the minimum contacts test for sixteen years." *Ibid.*

The Court's prolonged absence from this important field of constitutional law has effectively allowed the lower courts to place "various polishes on the *International Shoe* test in an attempt to give themselves some guidance." McFarland, 68 MO. L. REV. at 781; *id.* at 782 (each circuit "deals with the minimum contacts/fair play test in its own fashion"); ABA LITIGATION SECTION, BUSINESS & COMMERCIAL LITIGATION IN FEDERAL COURTS § 2.6, at 83 (Robert L. Haig ed. 1998)

(acknowledging "major inconsistencies in analysis from circuit to circuit"); *Metropolitan Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 577 (2d Cir.) (Walker, J., dissenting) ("The sprouting like weeds of multi-pronged tests * * * in the circuits * * * has left this legal garden in disarray.") (citing numerous cases), cert. denied, 519 U.S. 1006 (1996). This case provides a telling example. See pages 3-5, *supra* (describing the different legal tests of the Sixth and Eighth Circuits that were applied by the federal district courts in Michigan and Arkansas).

Moreover, since *Burger King* was decided in 1985, much has changed. The increasing globalization of markets and commerce, the use of the Internet in commerce, and the proliferation of large multinational business enterprises (see T. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 9, 80-81, 95 (2000)) – all are examples of important societal developments whose significance courts have struggled to determine in personal jurisdiction cases. Some lower courts, such as the Eighth Circuit, appear to have concluded that these developments have largely erased the limits on the adjudicative jurisdiction of individual States. Cf. *Asahi*, 480 U.S. at 117 (Brennan, J., joined by White, Marshall & Blackmun, JJ., concurring in part and concurring in the judgment) (suggesting that personal jurisdiction may be asserted over any nonresident manufacturer that is "aware that [its] final product is being marketed in the forum State" because the manufacturer "benefits economically from the retail sale").

Other courts, in contrast, have insisted on a stricter approach, adhering carefully to established distinctions and doctrinal categories in the law of personal jurisdiction and emphasizing the inherent limits on the power of any individual State within our federal system. These courts have emphasized the need, in conducting the due process analysis, to honor those principles of law (such as the "alter ego" doctrine in corporation law) that create a "degree of predictability to the legal system" that is necessary to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297 (internal quotations

omitted); see also *United States* v. *Bestfoods*, 524 U.S. 51, 61 (1998) (stating that "bedrock" principles of corporate law – including strict standards governing piercing of the corporate veil – are "deeply ingrained in our economic and legal system").

This case provides an ideal vehicle for addressing the substantial confusion in the lower courts. The first question presented – concerning the proper legal standard governing when the forum contacts of one corporation may be attributed or imputed to an affiliated corporation (here, a parent company) – raises an important and recurring issue that has sharply divided the lower courts. The second question presented offers the Court the opportunity to address misunderstandings about the meaning of the *International Shoe* test and resolve additional conflicts in the lower courts. The Eighth Circuit is especially in need of correction. For years, it has meandered among variations of a multi-factor balancing test that merely pays lip service to this Court's earlier decisions while ignoring this Court's more recent doctrinal developments. As we explain below, both questions presented easily satisfy this Court's traditional criteria for certworthiness.

Finally, that this case involves a *non-U.S. corporation* makes it an especially good vehicle for adapting the law of personal jurisdiction to "today's highly interdependent commercial world." *F. Hoffmann-La Roche Ltd.* v. *Empagran*, 124 S. Ct. 2359, 2366 (2004). In *Asahi*, this Court instructed that, "[i]n every case" involving an alien defendant, the interests of other countries "as well as the Federal interest in Government's foreign relations policies, will be best served by *a careful inquiry* into the reasonableness of the assertion of jurisdiction." 480 U.S. at 115 (emphasis added); see also *ibid.* ("*Great care and reserve* should be exercised when extending our notions of personal jurisdiction into the international field.") (emphasis added; internal quotations omitted); *id.* at 114-15 (burdens placed on alien defendant must be given "substantial weight"). Nevertheless, the lower courts have differed greatly in how much weight they give in cases such as this to the "procedural and substantive policies of other nations," and the "unique burdens" imposed on

non-U.S. corporations. *Asahi*, 480 U.S. at 115. The Eighth Circuit acknowledged that "the distance between France and Arkansas is substantial" but dismissed that important consideration with the surprisingly casual observation that "we presume that Dassault Aviation has ready access to air transportation for conveniently making the trip." App., *infra*, 9a.

I. The Decision Below Conflicts With Decisions Of This Court And The Lower Courts And Raises Important And Recurring Issues

In rejecting petitioner's due process challenge to the exercise of personal jurisdiction, the Eighth Circuit relied almost exclusively on the activities of Falcon Jet, petitioner's wholly owned subsidiary, in Arkansas. In so doing, the court of appeals rejected the district court's "bright-line rule" under which Falcon Jet's contacts could not be attributed to Dassault "unless the subsidiary's veil can be pierced under state law." App., *infra*, 4a. Consistent with other Eighth Circuit decisions, the panel then proceeded to apply a multi-factor balancing test in determining whether *in personam* jurisdiction could be asserted over Dassault consistent with due process. *Ibid.* That analysis and holding conflict, in at least two critical respects, with decisions of this Court, other circuits, and state supreme courts.

A. The Eighth Circuit's Approach To Attributing A Subsidiary's Forum Contacts To A Parent Company

As the district court noted, at all relevant times Falcon Jet had a relationship with Dassault that was "nothing more than a typical corporate relationship between a parent and its wholly owned subsidiary." App., *infra*, 19a; accord *id.* at 26a-27a (district court in Michigan). Nevertheless, the Eighth Circuit relied on the parent-subsidiary relationship to hold that Dassault had sufficient contacts with Arkansas to be amenable to jurisdiction there. *Id.* at 5a ("Dassault Aviation and Dassault Falcon Jet have a close, synergistic relationship that is not an abuse of the corporate organizational form, but is clearly relevant to the jurisdictional question."). That holding contributes to the confusion on what "has long been an unsettled issue." Voxman,

Jurisdiction over a Parent Corporation in its Subsidiary's State of Incorporation, 141 U. PA. L. REV. 327, 327 (1992).

1. In *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333 (1925), this Court held that the maintenance of corporate formalities – so long as "not pure fiction" – precluded a finding of jurisdiction over a foreign parent corporation based on its subsidiary's contacts. The plaintiff in *Cannon* (a North Carolina company) initially sued a Maine corporation in North Carolina state court for breach of contract. Plaintiff served a wholly owned subsidiary of the Maine corporation, which had an office in North Carolina and was "the instrumentality employed to market [the parent's] products within the state" (the subsidiary did not market the product "as [the parent's] agent" but rather, like Falcon Jet, purchased it from the parent and then sold it to dealers). *Id.* at 335. Although the parent was a large national enterprise that "dominate[d]" the subsidiary "*immediately and completely*," this Court refused to disregard the "corporate separation" so "carefully maintained" through the keeping of separate books and the observance of all corporate formalities. *Ibid.* (emphasis added). "The corporate separation," this Court reasoned, "though perhaps merely formal, was real. *It was not pure fiction*." *Id.* at 337 (emphasis added).

Although decided before *International Shoe* and *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), and based on federal common law rather than the Due Process Clause, *Cannon* has been followed by some courts faced with the issue of how to analyze whether a parent company, based on the activities of a subsidiary, can be haled into a distant forum where it does not do business. See, *e.g.*, *Consolidated Development Corp.* v. *Sherritt, Inc.*, 216 F.3d 1286, 1293-94 (11th Cir. 2000) (applying *Cannon* rule); *I.A.M. Nat'l Pension Fund* v. *Wakefield Indus., Inc.*, 699 F.2d 1254, 1258-59 (D.C. Cir. 1983) ("the relationship of parent and subsidiary alone would not suffice" for "service on the parent to reach a foreign subsidiary") (citing *Cannon*); *Gray* v. *Riso Kagaku Corp.*, 1996 WL 181488, at *3 (4th Cir. Apr. 17, 1996) ("mere fact that Riso Kagaku's subsidiaries do business in South Carolina does not confer personal jurisdiction over

Riso Kagaku"); *Gallagher* v. *Mazda Motor of Am.*, 781 F. Supp. 1079, 1083-84 & n.9 (E.D. Pa. 1992) (citing many cases that have followed *Cannon* and refused to impute contacts when "corporations observe and respect the corporate form").

2. Other courts, in contrast, have ruled that the *Cannon* standard was superseded by this Court's decision in *International Shoe*, see *Velandra* v. *Regie Nationale Des Usines Renault*, 336 F.2d 292, 296-97 (6th Cir. 1964), or by certain dicta in *World-Wide Volkswagen* (discussed at pages 28-30, *infra*). See *In re Telectronics Pacing Systems, Inc.*, 953 F. Supp. 909, 917-18 (S.D. Ohio 1997) (citing cases); *Coca-Cola Co.* v. *Procter & Gamble Co.*, 595 F. Supp. 304, 306-08 (N.D. Ga. 1983) (rejecting *Cannon*, but analyzing whether formal corporate separation between the defendant and its subsidiary had been maintained before finding jurisdiction over the parent in the forum).

Some of these courts have applied traditional "alter ego" principles in examining whether to pierce the corporate veil between parent and subsidiary in determining issues of personal jurisdiction. See, *e.g.*, *Alpine View Co.* v. *Atlas Copco AB*, 205 F.3d 208, 218-19 (5th Cir. 2000); *Volkswagenwerk Aktiengesellschaft* v. *Beech Aircraft Corp.*, 751 F.2d 117, 120 (2d Cir. 1984) (analyzing factors relevant to the possible "disregard for the separate corporate existence of the subsidiary"); *Great Lakes Overseas, Inc.* v. *Wah Kwong Shipping Group, Ltd.*, 990 F.2d 990, 996-97 (7th Cir. 1993) (looking to Illinois alter-ego principles and holding that jurisdiction could not be asserted over a Hong Kong corporation based on the contacts of its subsidiary in Illinois). Some state supreme courts have also required a showing of alter ego status. See, *e.g.*, *Panamerican Mineral Servs., Inc.* v. *KLS Enviro Resources, Inc.*, 916 P.2d 986, 990-91 (Wyo. 1996) (listing factors that justify piercing the corporate veil) (citing *Westinghouse Elec. Corp.* v. *Superior Court*, 551 P.2d 847 (Cal. 1976)). See also Comment, *Jurisdiction Over a Corporation Based on the Contacts of a Related Corporation: Time for a Rule of Attribution*, 92 DICK. L. REV. 917, 925-37 (1988) (discussing additional "alter ego" cases and acknowledging divergence in approaches of lower courts).

3. The Eighth Circuit's decision in this case conflicts with *both* of these lines of cases. The panel ruled that "piercing Dassault Falcon Jet's corporate veil" was not "required to establish the minimum contacts necessary for the exercise of personal jurisdiction in Arkansas." App., *infra*, 5a. Instead, the court of appeals held that it was enough that Dassault has a "close, synergistic" or "symbiotic" relationship with its subsidiary (*id.* at 5a, 9a) – even though virtually all the evidence of such a relationship in this case (see note 2, *supra*) consists of ordinary incidents of a parent-subsidiary relationship.

The Eighth Circuit's holding squarely conflicts with *Cannon* and its progeny because there is no dispute that the formal separation between Dassault and Falcon Jet was scrupulously maintained. The panel's holding also conflicts with cases that, though declining to follow *Cannon*, apply the "alter ego" doctrine to determine whether attribution is appropriate. Under the "alter ego" standards employed in Arkansas, the corporate veil could not possibly have been pierced in this case – and the Eighth Circuit did not suggest otherwise. See App., *infra*, 15a-18a & n.4 (discussing Arkansas case law); accord App., *infra*, 26a-27a (district court in Michigan similarly held that requirements of Michigan "alter ego" doctrine could not be met). The Eighth Circuit's novel "close, symbiotic relationship" test for attributing the forum contacts of corporate affiliates – if indeed anything so seemingly indeterminate can accurately be described as a "test" – is already having an impact within that jurisdiction. See *Enterprise Rent-A-Car Co.* v. *U-Haul Int'l, Inc.*, 2004 WL 1724654, at *10 (E.D. Mo. July 22, 2004) (applying the "symbiotic relationship" test and finding it satisfied based, among other things, on parent company's provision of "accounting, technical, and advisory services" to subsidiary, fact that the two companies' businesses were "interrelated and complementary," and the linkage of companies' websites reflecting a "unified marketing strategy").

4. The Eighth Circuit is not the only court to disregard or depart from veil-piercing standards in attributing the forum contacts of one affiliated corporation to another. See, *e.g.*,

Wells Fargo & Co. v. *Wells Fargo Express Co.*, 556 F.2d 406, 425 (9th Cir. 1977); *Bridgestone Corp.* v. *Lopez*, 131 S.W.3d 670, 681-86 (Tex. Ct. App. 2004); *Daimler-Benz Aktiengesellschaft* v. *Olson*, 21 S.W.3d 707, 720-25 (Tex. Ct. App.), rev. denied, 53 S.W.3d 308 (Tex. 2000), cert. denied, 535 U.S. 1077 (2002); see also *Davis* v. *Metro Prods., Inc.*, 885 F.2d 515, 521 (9th Cir. 1989) (holding that "the question whether there exists a jurisdictional corporate shield" is not "an issue of constitutional dimensions"); *Energy Reserves Group, Inc.* v. *Superior Oil Co.*, 460 F. Supp. 483, 504-05 (D. Kan. 1978); *Brunswick Corp.* v. *Suzuki Motor Co., Ltd.*, 575 F. Supp. 1412, 1420 (E.D. Wis. 1983). Some of these departures from traditional principles of corporation law have been quite substantial. In *Lopez*, for example, a Texas court recently used a broad "single business enterprise" theory to justify jurisdiction over a Japanese corporation, with no forum contacts, for a claim arising from an accident in Mexico based on a product manufactured by the corporation's indirect subsidiary in Mexico. See 131 S.W.2d at 681-86. Thus, the implicit (but necessary) rejection of the *Cannon* approach by the court below gives this Court an opportunity to correct – or ratify – the approach of numerous lower courts to a clean legal issue.

5. Commentators have recognized the pervasive confusion and conflicts in the lower courts on the attribution issue:

> The confusion in the courts is understandable. A single court has sometimes reached different conclusions on the issue in cases falling within months of each other. The United States Supreme Court has not recently addressed the validity of *Cannon* or the effect of *International Shoe* on the *Cannon* doctrine. In light of the confusion among the courts concerning the authority of states to exercise jurisdiction over corporations on the basis of the activities of affiliated corporations, the United States Supreme Court should resolve the issue.

Comment, *Jurisdiction Over a Corporation on the Basis of the Contacts of an Affiliated Corporation: Do you Have to Pierce the Corporate Veil?*, 61 U. CIN. L. REV. 595, 618 (1992).

B. The Eighth Circuit's Multi-Factor Balancing Test

1. In *International Shoe*, this Court held that the Due Process Clause precludes a State from exercising *in personam* jurisdiction over a nonresident defendant unless the defendant has "minimum contacts" with the forum "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." 326 U.S. 310, 316. The panel's decision in this case (consistent with other Eighth Circuit decisions) applied a multi-factor balancing test in deciding whether the *International Shoe* standard was satisfied. That approach, however, is inconsistent with this Court's decisions in at least three respects.

First, it ignores this Court's teaching that the *International Shoe* test *consists of two separate steps*: (1) "minimum contacts" ; and (2) "fair play and substantial justice." "Once it has been decided that a defendant purposefully established minimum contacts with the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." *Burger King*, 471 U.S. at 476 (internal quotations omitted). The existence of minimum contacts, in other words, is the "constitutional touchstone." *Id.* at 474; accord *World-Wide Volkswagen*, 444 U.S. at 291 ("a state court may exercise personal jurisdiction over a nonresident defendant *only* so long as there exist 'minimum contacts' between the defendant and the forum State") (emphasis added). The Court repeated this two-step analysis in *Asahi*. 480 U.S. 102, 108-09 (1987) (plurality); *id.* at 121-22 (opinion of Stevens, J.).

The two-stage analysis is important because it ensures that the constitutional minimum nexus between a nonresident defendant and the forum is established *before* courts undertake an examination of the more nebulous "fairness" considerations. Unless the analysis proceeds in two distinct steps, the "fair play and substantial justice" factors (which have little if anything to

do with the extent of the defendant's contacts with the forum) might be used to support the assertion of jurisdiction even if the defendant's forum contacts are nonexistent. Ignoring the teachings of *Burger King* and *Asahi*, the panel below simply tossed Dassault's attenuated contacts with Arkansas into a goulash with such "fair play and substantial justice" factors as the plaintiff's convenience. See App., *infra*, 3a (explaining that fair-play factors would be considered "[i]n assessing the nature of the contacts between Dassault Aviation and Arkansas").

Second, in evaluating whether Dassault could be compelled to appear and defend this lawsuit in Arkansas, the panel failed to distinguish between (or separately analyze) two types of personal jurisdiction: "specific" and "general" jurisdiction. See note 1, *supra*; *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414-16 n.9 (1984). This distinction is important because it provides structure to an otherwise amorphous due process inquiry. It is also important because the underlying *legal tests* concerning the requisite "minimum contacts" with a forum are *different* for general and specific jurisdiction. Before a State may assert general jurisdiction, the defendant must have engaged in activities within the forum that are both "continuous" and "systematic." *Id.* at 416 n.9. For corporate defendants, that test ordinarily is satisfied only where the defendant is incorporated or has significant operations, facilities, employees, and property. In contrast, the test for "specific" jurisdiction does not require contacts that are either "continuous" or "systematic," but rather requires a close nexus between the forum contacts and plaintiff's legal claims. By ignoring the crucial distinction between specific and general jurisdiction, the panel's decision strays from this Court's teachings.

Third, the Eighth Circuit's balancing approach in general, and the panel's decision in particular, ignore relevant comity considerations. As noted above, this Court in *Asahi* made clear that, in cases involving non-U.S. defendants, the inquiry "must" take account of the "procedural and substantive policies of other nations" and of the "unique burdens" imposed on a non-U.S.

corporation forced to defend litigation in a distant State. 480 U.S. at 113, 115. But the panel's analysis includes no serious consideration of the special concerns raised by exercising jurisdiction in Arkansas over an unwilling French manufacturer.

In *F. Hoffmann-La Roche Ltd.* v. *Empagran*, 124 S. Ct. 2359 (2004), this Court recently took account of comity concerns in recognizing that the *prescriptive* jurisdiction of the United States ordinarily will not be understood to reach foreign conduct by non-U.S. companies that causes independent foreign harm (underlying a plaintiff's legal claims). *Id.* at 2366-67. Moreover, "America's antitrust laws" have long been understood not to apply to foreign conduct that does not cause a "*domestic* antitrust injury." *Id.* at 2367 (emphasis in original). At bottom, the present case raises a corollary question: whether a single State's *adjudicative* jurisdiction may be extended, in a product liability action, to a foreign manufacturer that designed, made, and sold its product abroad, if the product caused no injury giving rise to plaintiff's claim in the State asserting jurisdiction. In "today's highly interdependent commercial world" (*id.* at 2366), the answer to that question will determine not just the scope of personal jurisdiction in *U.S. courts*. Interdependence, after all, is a two-way street. The approach taken by U.S. courts in such cases is likely to be reciprocated abroad, with the end result that U.S. manufacturers will be subjected to similarly broad assertions of adjudicatory jurisdiction (and similar disregard of corporate formalities) in the courts of foreign countries.

2. The panel's application of the Eighth Circuit's unstructured, multi-factor balancing test is at odds with decisions of many lower courts. Other circuits read this Court's decisions as having articulated fairness or reasonableness as a separate and independent stage in the *International Shoe* analysis. For example, in *Donatelli* v. *Nat'l Hockey League*, 893 F.2d 459 (1st Cir. 1990), the court stated: "*Only if – and after* – minimum contacts have been shown to exist may such contacts 'be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play

and substantial justice."'" *Id.* at 464 (emphasis added) (quoting *Burger King*, 471 U.S. at 476). Thus, the First Circuit explained, "the judicial inquiry * * * has two stages." *Id.* at 465. Other circuits and state supreme courts agree. See, *e.g.*, *Metropolitan Life Ins. Corp.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir.), cert. denied, 519 U.S. 1006 (1996); *OMI Holdings Inc.* v. *Royal Ins. Co.*, 149 F.3d 1086, 1091 (10th Cir. 1998); *Sutherland* v. *Brennan*, 901 P.2d 240, 245 (Or. 1995); *Cerberus Partners, L.P.* v. *Gadsby & Hannah, LLP*, 836 A.2d 1113, 1121 (R.I. 2003); see also Maltz, *Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on* Asahi Metal Indus. Co. *v.* Superior Ct. of Cal., 1987 DUKE L.J. 669, 680 (discussing the role of *Asahi* in creating a separate "reasonableness" analysis).

The Eighth Circuit unfortunately is not alone in refusing to treat "minimum contacts" and "fair play and substantial justice" as separate steps in the constitutional analysis. At least three state supreme courts in the Eighth Circuit currently apply the following, five-part test that originated in *Aftanase* v. *Economy Baler Co.*, 343 F.2d 187, 195-97 (8th Cir. 1965) (Blackmun, J.):

> (1) the nature and quality of a nonresident defendant's contacts with the forum state; (2) the quantity of the nonresident defendant's contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the forum state's interest in providing a forum for its residents; and (5) the convenience of the parties.

Hansen v. *Scott*, 645 N.W. 2d 223, 234 (N.D. 2002), cert. denied, 537 U.S. 1108 (2003). Accord *Covia* v. *Robinson*, 507 N.W.2d 411, 415 (Iowa 1993); *Vikse* v. *Flaby*, 316 N.W.2d 276, 282 (Minn. 1982); see also *Lee* v. *Goshen Rubber Co.*, 635 N.E.2d 214, 216 (Ind. App. 1994).[4]

---

[4] Although the state courts that apply this five-factor balancing test take the view that "the first three factors are of primary importance," and the "fourth and fifth factors are of only secondary importance and are not determinative," *Ensign* v. *Bank of Baker*, 676 N.W. 2d 786, 791 (N.D. 2004), the fact remains that it is a balancing test rather than (as this Court's cases require) a two-

The Eighth Circuit's failure to differentiate between specific and general jurisdiction – and to apply the different standards applicable to each in assessing the existence of minimum contacts – also conflicts with the decisions of other circuits. Following this Court's *Helicopteros* decision, many lower courts have taken pains to conduct separate inquiries into whether specific or general jurisdiction may be asserted. See, *e.g.*, *Purdue Research Found.* v. *Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 780-89 (7th Cir. 2003); *ESAB Group, Inc.* v. *Centricut, Inc.*, 126 F.3d 617, 623-26 (4th Cir. 1997), cert. denied, 523 U.S. 1048 (1998); *Cerberus Partners, L.P.* v. *Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118-23 (R.I. 2003). As the panel's decision in this case shows, however, the Eighth Circuit has not adhered to this critical distinction.

Finally, other lower courts have – consistent with *Asahi* – taken foreign-policy considerations into account in evaluating whether it would offend "fair play and substantial justice" to assert jurisdiction over a resistant non-U.S. corporation. See, *e.g.*, *Amoco Egypt Oil Co.* v. *Leonis Navigation Co.*, 1 F.3d 848, 851 (9th Cir. 1993); *Guardian Royal Exch. Assurance, Ltd.* v. *English China Clays, P.L.C.*, 815 S.W.2d 223, 228-29 (Tex. 1991). But the Eighth Circuit gave no weight to such concerns.

3. As shown by the decision of the district court in Michigan dismissing Anderson's claim against Dassault, other circuits interpret *International Shoe* as requiring consideration of a three-factor test, including whether the defendant has "purposefully availed" itself of the "privilege of acting in the forum state or causing a consequence in the forum state." App., *infra*, 27a (quoting *Kerry Steel, Inc.* v. *Paragon Indus., Inc.*, 106 F.3d 147, 150 (6th Cir. 1997)). By its plain terms, the Sixth Circuit's test differs from the Eighth Circuit's. See pages 3-7, *supra*.

---

stage analysis. Moreover, as this Court made clear in *Burger King*, the fourth and fifth factors (as well as other "fair play and substantial justice" considerations) in fact *can be determinative*: they may provide a reason why due process bars the exercise of *in personam* jurisdiction even over a defendant that has "minimum contacts" with the forum. See 471 U.S. at 477-78.

Notably, the Michigan district court held that Anderson could not satisfy this competing due process test in Michigan.

4. As explained above (at 9-10), this confusion in the lower courts has not been lost on commentators. See also McFarland, *supra*, 68 MO. L. REV. at 782-89 (describing the Eighth Circuit's five-part test and the "widely varying" tests applied by other circuits and state courts). Moreover, commentators have singled out the Eighth Circuit's approach for criticism. See Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 840-42 (2004) (Eighth Circuit's "whole-hog" approach "collapses the general jurisdiction, specific jurisdiction, and fair play and substantial justice analysis into one sweeping inquiry," "often fails to adequately factor the quantitative and qualitative nature of contacts necessary for an assertion of general jurisdiction," "intermingle[s] specific and general jurisdiction principles," and creates serious uncertainty for defendants).[5] The present case, coming from the Eighth Circuit and presenting that court's approach cleanly for review, is as good a vehicle as this Court is ever likely to get for resolving these recurring issues.[6]

---

[5] This Court's review is especially needed because of the continuing influence in the Eighth Circuit (and in several States) of then-Judge Blackmun's opinion in *Aftanase*, *supra*. The district court applied *Aftanase*'s five-factor balancing test (App., *infra*, 14a), and the Eighth Circuit has continued to cite the test favorably and apply it. See, *e.g.*, *Wessels, Arnold & Henderson* v. *National Medical Waste, Inc.*, 65 F.3d 1427, 1432 (8th Cir. 1995); *Land-O-Nod Co.* v. *Bassett Furn. Indus., Inc.*, 708 F.2d 1338, 1340 (8th Cir. 1983). In its failure to distinguish adequately between "specific" and "general" jurisdiction, and in its collapse of the two-stage due process inquiry into one balancing test, the panel's approach owes an obvious intellectual debt to the *Aftanase* test. Because the *Aftanase* test was distilled from five decisions of this Court issued between 1945 and 1958 (see 343 F.2d at 195-97), it is not surprising that it fails to reflect this Court's more recent doctrinal refinements. See Rhodes, *supra*, 34 SETON HALL L. REV. at 840-41 (Eighth Circuit's approach "predate[s] significant modern refinements").

[6] This case, coming from federal court, does not present any of the 28 U.S.C. § 1257 finality issues that respondents sometimes raise in cases coming from state court. It thus presents a better or at least cleaner vehicle than did

C. The Issues Raised Are Important And Recurring

The Eighth Circuit's decision presents significant questions concerning the limits imposed by the Due Process Clause on the exercise of *in personam* jurisdiction. Thirty-two out of fifty States authorize the assertion of personal jurisdiction to the maximum extent permitted by due process. See McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended The Limits Of Due Process*, 84 B.U. L. REV. 491, 525-30 (2004). The question of what limits are imposed by the Federal Constitution thus arises with great regularity not only in the courts of those States but also in the federal courts that sit in those States (in diversity as well as federal-question cases). See *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 104-05 (1987).

Moreover, each of the two issues discussed above is both significant and recurring. The proper approach to attributing or imputing the forum contacts of a subsidiary corporation to its parent (or vice versa), and for making attribution decisions concerning other types of corporate affiliates, is frequently litigated in the federal and state courts, as several empirical studies confirm. See, *e.g.*, Swain & Aguilar, *Piercing the Veil To Assert Personal Jurisdiction Over Corporate Affiliates: An Empirical Study of the* Cannon *Doctrine*, 84 B.U. L. Rev. 445, 450, 455 (2004) (analysis of more than 500 reported cases) (noting that in cases involving "multi-corporate groups" the issue of veil-piercing "arises with great frequency in the area of personal jurisdiction"); Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1036 (1991). The same issue arises in a variety of other procedural settings (such as diversity jurisdiction and venue). See P. BLUMBERG, THE LAW OF CORPORATE GROUPS: PROCEDURAL PROBLEMS IN THE LAW OF PARENT AND SUBSIDIARY CORPORATIONS §§ 6.04, 9.03-9.05 (1983).

DaimlerChrysler Aktiengesellschaft v. *Olson*, 535 U.S. 1077 (2002), *McInnis* v. *Daniel*, 535 U.S. 1077 (2002), or *Southern Co.* v. *Alderson*, 535 U.S. 1090 (2002).

Equally significant and recurring is the second question presented, which involves the proper test for determining whether a nonresident defendant has "minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316. Indeed, that issue arises in *every* personal jurisdiction case that involves due process limits. There is no reason why substantially different tests should be applied in different circuits and States. The commands of the Due Process Clause should not vary from jurisdiction to jurisdiction.

These two issues each warrant this Court's review. Together, they make this case an excellent vehicle for clarifying and rationalizing the law of personal jurisdiction.

II. The Decision Below Is Incorrect

In addition to being squarely at odds with the decisions of this Court, other circuits, and state supreme courts, the Eighth Circuit's holding and analysis are severely flawed. The lower court improperly attributed the Arkansas contacts of Falcon Jet to its shareholder and parent company despite the absence of any valid basis for piercing the corporate veil; incorrectly relied on such ordinary features of large corporate families as the existence of overlapping officers or directors and the use of internationalist rhetoric in annual reports; applied a faulty test for assessing the due process limits on *in personam* jurisdiction; and ultimately reached the wrong conclusion as to whether the exercise of jurisdiction in this case is consistent with due process. The decision, in short, is wrong at every turn.

1. The Eighth Circuit was wrong to refuse, in attributing Falcon Jet's Arkansas contacts to petitioner, to follow *Cannon* or at least to honor traditional veil-piercing and "alter ego" doctrines. As explained above (at 13, 15-16), the Eighth Circuit's analysis is inconsistent with *Cannon*. It also ignores this Court's basic teachings about how courts must go about determining the requirements of due process. Courts must look to the "traditional" practices and principles of our people in deter-

mining what due process requires. *International Shoe*, 326 U.S. at 316; see also *Burnham*, 495 U.S. at 609-10 (plurality). This the Eighth Circuit failed to do.

This Court recently reaffirmed that "bedrock" principles of corporate law – including stringent standards governing piercing of the corporate veil – are "'deeply ingrained in our economic and legal systems.'" *United States* v. *Bestfoods*, 524 U.S. 51, 61-62 (1998) (quoting Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 YALE L.J. 193 (1929)); "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Foods Co.* v. *Patrickson*, 538 U.S. 468, 474 (2003). Certainly that principle was well established by the time this Court decided *International Shoe* in 1945. See, *e.g.*, *Berkey* v. *Third Ave. Ry. Co.*, 155 N.E. 58, 58 (N.Y. 1926) (Cardozo, J.) ("Stock ownership alone would be insufficient to charge the dominant company with liability for the torts of the subsidiary.").[7]

The Eighth Circuit's attribution holding also runs counter to several other decisions of this Court. In *Shaffer* v. *Heitner*, 433 U.S. 186, 213 (1977), the Court held that the presence of a corporation in Delaware did not justify jurisdiction over the corporation's officers and directors. In *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980), the Court rejected the argument that jurisdiction over an individual defendant in an automobile accident case could be based solely on the forum contacts of his insurance company, explaining that such a result was "plainly unconstitutional." And in *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770 (1984), the Court reaffirmed the principle that "[e]ach

---

[7] The Eighth Circuit's reliance on the fact that Dassault and Falcon Jet had several overlapping officers and directors (App., *infra*, 7a) as a basis for attributing Falcon Jet's Arkansas contacts to Dassault also ignores "time-honored common-law" principles. *Bestfoods*, 524 U.S. at 70. As this Court explained in *Bestfoods*, "it is entirely appropriate" and "normal" for "directors of a parent company to serve as directors of a subsidiary" and "courts generally presume that * * * directors are wearing their 'subsidiary hats' and not their 'parent hats' when acting for the subsidiary." *Id.* at 69 (internal quotations omitted).

defendant's contacts with the forum State must be assessed *individually*," holding that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." *Id.* at 781 n.13 (emphasis added).

Finally, the Eighth Circuit's attribution holding is wrong because it would allow the protections conferred by the Due Process Clause on foreign corporations to be circumvented easily. Under the Eighth Circuit's approach, there is no longer any need to show "minimum contacts" with a forum State before compelling a non-U.S. corporation with no contacts of its own with the State to appear and defend litigation there – as long as the absent corporate parent has a relationship that can be characterized as "synergistic" or "symbiotic" with a subsidiary that operates in the forum. That cannot be right. Corporations do not forfeit constitutional protections merely because they have a "synergistic" relationship to a subsidiary.

2. Equally flawed is the Eighth Circuit's multi-factor "balancing" test for determining the due process limits on personal jurisdiction. As explained above (at 17-20), the court of appeals' approach is mistaken because it is squarely at odds with this Court's decisions in at least three respects. The Eighth Circuit's surprisingly casual treatment of comity concerns (despite this Court's contrary instructions in *Asahi*), and its failure to treat the threshold inquiry into "minimum contacts" as distinct from the fairness inquiry, are serious errors.[8]

Particularly troubling is the Eighth Circuit's refusal to analyze specific and general jurisdiction separately. See note 1, *supra*. Because due process places different limits on the

---

[8] Moreover, in combining the two-stage *International Shoe* inquiry into a single balancing test, the Eighth Circuit relied on the "fairness" considerations as *affirmative reasons* why due process would allow the assertion of jurisdiction over Dassault in Arkansas. But the "fair play and substantial justice" factors are aimed at uncovering situations where jurisdiction may *not* be exercised *even though* the defendant has "minimum contacts" with the forum (the minimum nexus required by the Constitution). Thus, the Eighth Circuit turned the "fairness" inquiry on its head.

exercise of general and specific jurisdiction, an analysis of personal jurisdiction that employs neither the proper test for general jurisdiction nor the proper test for specific jurisdiction is constitutionally defective. Moreover, the Eighth Circuit's refusal to apply this settled distinction leaves defendants such as petitioner to guess as to the basis on which personal jurisdiction has been exercised – and the ramifications of a ruling upholding the assertion of jurisdiction.[9]

Finally, the Eighth Circuit's multi-factor test should be rejected because it does not adequately cabin state adjudicative authority – and indeed is so vague and indeterminate that it amounts to a judicial blank check. If permitted to stand, the Eighth Circuit's decision will seriously undermine the "degree of predictability to the legal system" that is necessary to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297 (internal quotations omitted).

3. The Eighth Circuit's ultimate determination that due process allows the assertion of personal jurisdiction over Dassault is also mistaken. The record in this case demonstrates that Anderson did not, and could not, meet her heavy burden regarding general jurisdiction. As the district court correctly noted (App., *infra*, 15a), Dassault has *none* of the traditional indicia of corporate "presence" in Arkansas. Indeed, as both the district court and Eighth Circuit acknowledged (*id.* at 3a, 15a), Dassault has *no* direct contacts with Arkansas – let alone the "continuous" and "systematic" contacts required (*Helicopteros*, 466 U.S. at 416 n.9) for the assertion of general jurisdiction. Once the panel's erroneous attribution of *Falcon Jet*'s contacts to Das-

---

[9] The implications of a decision upholding specific and general jurisdiction are significantly different. Because general jurisdiction allows a State to entertain *any and all* claims against a defendant – even those unrelated to forum contacts – a decision upholding general jurisdiction has potentially far-reaching ramifications. In contrast, the exercise of specific jurisdiction has much more limited implications for the defendant's susceptibility to litigation in the forum.

sault is set to one side, as it must be, there is no conceivable basis for general jurisdiction.[10]

Nor is there any valid basis for asserting specific jurisdiction in this case. It is undisputed that Dassault designed, manufactured, and sold the aircraft in France, that the accident occurred in Michigan, that the alleged injuries were suffered by a Michigan resident, and that the circumstances surrounding the relevant flight had absolutely no connection to Arkansas. Thus, respondent cannot possibly demonstrate that her product liability claim "arose out of" or "related to" any contacts that Dassault had with Arkansas.

III. This Case May Also Provide An Opportunity To Clarify The "Stream Of Commerce" Theory

In the lower courts, Anderson unsuccessfully argued that *in personam* jurisdiction could be exercised over Dassault based on the "stream of commerce" theory – a type of specific jurisdiction that has been recognized in cases involving product manufacturers whose goods travel into the forum and cause injuries there. Dassault anticipates that if review is granted Anderson will renew this argument as an alternative basis for affirmance. Because of that possibility, this case may present an opportunity for this Court to dispel additional confusion concerning the legitimacy and meaning of this jurisdictional theory.

The "stream of commerce" theory was first discussed by this Court in *World-Wide Volkswagen*, which held that the Oklahoma courts could not exercise jurisdiction over a nonresident

---

[10] At several points in its opinion, the Eighth Circuit stated that Dassault's contacts with Arkansas "go well beyond" the "mere ownership" of Falcon Jet's stock, pointing to Dassault's "establishment of a distribution system in Arkansas, and marketing its products there." App., *infra*, 5a; see also *id.* at 7a. But it was *Falcon Jet*, not Dassault, that marketed products in Arkansas, and it is difficult to see how Dassault's entry into a contractual relationship with an exclusive distributor covering the entire Western Hemisphere could qualify as an *activity* of *Dassault* in Arkansas. In any event, even if entering into a distributorship contract with Falcon Jet did qualify as an Arkansas contact, it would not come close to providing a valid basis for exercising general jurisdiction over Dassault.

retailer (World-Wide) and its wholesale distributor based on the fact that an automobile sold by the retailer in New York to New York residents was later driven to Oklahoma (where it was involved in an accident). Although the automobile's foreign manufacturer (Audi) and its U.S. importer (Volkswagen of America) were not parties to the appeal before this Court, the Court nonetheless offered this oft-cited observation:

> [I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States *if* its allegedly defective merchandise *has there been the source of injury to its owners or to others*.

444 U.S. at 297 (emphasis added); see also *Burger King*, 471 U.S. at 473 (noting, in dicta, that jurisdiction may be exercised over "'a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State' *and those products subsequently injure forum consumers*") (quoting *World-Wide Volkswagen*) (emphasis added). "[B]ecause the example used by the Court [in *World-Wide Volkswagen*] was directed at manufacturers and distributors," but "only the retail dealer and regional distributor were contesting jurisdiction," this passage "is dicta." *Ruckstuhl* v. *Owens Corning Fiberglas Corp.*, 731 So. 2d 881, 887, 889 (La.), cert. denied, 528 U.S. 1019 (1999).

In *Asahi*, 480 U.S. 102, this Court sought to clarify the *World-Wide Volkswagen* dicta, but divided 4-1-4, leaving the meaning of the "stream of commerce" theory uncertain. The Court's splintered decision in *Asahi* has generated substantial confusion and conflict.[11] As respondent acknowledged below,

---

[11] Compare, *e.g.*, *Lesnick* v. *Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (4th Cir. 1994) (adopting approach taken by Justice O'Connor), cert. denied, 513 U.S. 1151 (1995), with, *e.g.*, *Dehmlow* v. *Austin Fireworks*, 963 F.2d 941, 946-47 (7th Cir. 1992) (adopting approach of Justice Brennan). Still other

the Eighth Circuit has "chosen to adopt the more expansive approach reflected in Justice Brennan's opinion" instead of Justice O'Connor's more limited approach. Resp. C.A. Br. 33. Indeed, the Eighth Circuit has adopted an especially "expansive" approach (*id.* at 20) in a series of cases involving foreign manufacturers that have contracted with U.S. distributors whose territories include the forum State. See pages 7-8, *supra*.[12]

Even under the most expansive view, however, the "stream of commerce" theory requires *an injury in the forum*. That is the unmistakable import of the passages quoted above from both *Burger King* and *World-Wide Volkswagen*. See also, *e.g.*, *Bearry* v. *Beech Aircraft Corp.*, 818 F.2d 370, 375 (5th Cir. 1987) (exercise of jurisdiction based on "stream of commerce" theory "ensures that the contact that caused harm in the forum occurred there through the defendant's conduct and not the plaintiff's unilateral activities"). In this case, however, the accident involving respondent did not occur in Arkansas but rather in Michigan. For that reason, both the district court and the Eighth Circuit properly declined to rely on the "stream of commerce" theory. Nonetheless, we assume that if review is granted respondent will renew this argument. That might permit this Court, if it wished, to clarify the meaning of the "stream of commerce" theory.

CONCLUSION

The petition for a writ of certiorari should be granted.

---

courts, in the face of the fractured *Asahi* vote, have "continued to apply" the dicta in *World-Wide Volkswagen*. See *Vermeulen* v. *Renault U.S.A., Inc.*, 985 F.2d 1534, 1548 n.17 (11th Cir.), cert. denied, 508 U.S. 907 (1993) (collecting cases). The Louisiana Supreme Court has treated the continuing validity, and meaning, of the "stream of commerce" theory as an open issue since there is "no Supreme Court precedent that guides us." *Ruckstuhl*, 731 So. 2d at 889. This disarray has been widely acknowledged. See, *e.g.*, *id.* at 887 n.5. Respondent acknowledged it below. Resp. C.A. Br. 30.

[12] The record shows that Falcon Jet sold the subject aircraft to Amway through its regional sales manager whose territory included Ohio, Michigan and Indiana, but not Arkansas. C.A. App. 20.

Respectfully submitted,

DAVID J. ADAMS
JOHN G. PFEIFFER
STEPHEN P. KENNEY
Pfeiffer & Adams
300 W. Adams Street
Suite 601
Chicago, IL 60606
(312) 377-7775

ALAN E. UNTEREINER*
MAX HUFFMAN
Robbins, Russell, Englert,
Orseck & Untereiner LLP
1801 K Street, N.W.
Suite 411
Washington, D.C. 20006
(202) 775-4500

Counsel of Record

AUGUST 2004